

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

Warren Bradley Simmons, M.D.)

Case No. 800-2016-021102

**Physician's and Surgeon's)
Certificate No. A40948)**

Respondent)

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 5, 2017.

IT IS SO ORDERED August 29, 2017.

MEDICAL BOARD OF CALIFORNIA

By:


**Kimberly Kirchmeyer
Executive Director**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 MACHAELA M. MINGARDI
Deputy Attorney General
4 State Bar No. 194400
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5696
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 800-2016-021102

11 **Warren Bradley Simmons, M.D.**
12 4989 Wyffels Road
13 Canandigua, NY 14424

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Physician's and Surgeon's Certificate
No. A 40948,

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
21 of California (Board). She brought this action solely in her official capacity and is represented in
22 this matter by Xavier Becerra, Attorney General of the State of California, by Machaela M.
23 Mingardi, Deputy Attorney General.

24 2. Warren Bradley Simmons, M.D. (Respondent) is represented in this proceeding by
25 attorney John L. Fleeer, Esq., whose address is 1850 Mt. Diablo Blvd., Suite 120, Walnut Creek,
26 California 94596.

27 3. On or about June 25, 1984, the Board issued Physician and Surgeon's Certificate No.
28 A 40948 to Warren Bradley Simmons, M.D. (Respondent). Said license expired on January 31,
2014. On May 19, 2016, the Medical Board of California suspended Respondent's license

1 pursuant to Business and Professions Code section 2310, which authorizes immediate suspension
2 when a medical license has been suspended or revoked in another state.

3 JURISDICTION

4 4. Accusation No. 800-2016-021102 was filed before the Board and is currently pending
5 against Respondent. The Accusation and all other statutorily required documents were properly
6 served on Respondent on July 22, 2016. Respondent timely filed his Notice of Defense
7 contesting the Accusation. A copy of Accusation No. 800-2016-021102 is attached as Exhibit A
8 and incorporated by reference. A copy of the New York State Board for Professional Medical
9 Conduct Modification Agreement and Order dated May 25, 2017, is attached herein as Exhibit B.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 800-2016-021102. Respondent also has carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
14 and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent understands that the charges and allegations in Accusation No. 800-2016-
25 021102, if proven at a hearing, constitute cause for imposing discipline upon his Physician and
26 Surgeon's Certificate.

27 9. For the purpose of resolving the Accusation without the expense and uncertainty of
28 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

1 basis for the charges in the Accusation and that those charges constitute cause for discipline.
2 Respondent hereby gives up his right to contest that cause for discipline exists based on those
3 charges.

4 10. Respondent understands that by signing this Stipulation he enables the Board to issue
5 an order accepting the surrender of his Physician and Surgeon's Certificate without further
6 process.

7 CONTINGENCY

8 11. This Stipulation shall be subject to approval by the Board. Respondent understands
9 and agrees that counsel for Complainant and the staff of the Board may communicate directly
10 with the Board regarding this Stipulation and surrender, without notice to or participation by
11 Respondent or his counsel. By signing the Stipulation, Respondent understands and agrees that
12 he may not withdraw his agreement or seek to rescind the Stipulation prior to the time the Board
13 considers and acts upon it. If the Board fails to adopt this Stipulation as its Decision and Order,
14 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
15 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
16 be disqualified from further action by having considered this matter.

17 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
18 copies of this Stipulated Surrender of License and Order, including Portable Document Format
19 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

22 ORDER

23 IT IS HEREBY ORDERED that Physician and Surgeon's Certificate No. A 40948, issued
24 to Respondent Warren Bradley Simmons, M.D., is surrendered and accepted by the Medical
25 Board of California.

26 1. The surrender of Respondent's Physician and Surgeon's Certificate and the
27 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
28

1 against Respondent. This Stipulation constitutes a record of the discipline and shall become a
2 part of Respondent's license history with the Medical Board of California.

3 2. Respondent shall lose all rights and privileges as a physician and surgeon in
4 California as of the effective date of the Board's Decision and Order.

5 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
6 issued, his wall certificate on or before the effective date of the Decision and Order.

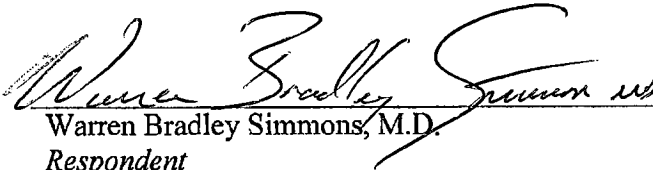
7 4. If Respondent ever files an application for licensure or a petition for reinstatement in
8 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
9 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
10 effect at the time the petition is filed, and all of the charges and allegations contained in
11 Accusation No. 800-2016-021102 shall be deemed to be true, correct and admitted by Respondent
12 when the Board determines whether to grant or deny the petition.

13 5. If Respondent should ever apply or reapply for a new license or certification, or
14 petition for reinstatement of a license, by any other health care licensing agency in the State of
15 California, all of the charges and allegations contained in Accusation, No. 800-2016-021102 shall
16 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
17 Issues or any other proceeding seeking to deny or restrict licensure.

18
19 ACCEPTANCE

20 I have carefully read the above Stipulated Surrender of License and Order and have fully
21 discussed it with my attorney, Fleer. I understand the Stipulation and the effect it will have on
22 my Physician and Surgeon's Certificate. I enter into this Stipulated Surrender of License and
23 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
24 of the Medical Board of California.


25
26 DATED: 7/29/17


Warren Bradley Simmons, M.D.
Respondent

1 I have read and fully discussed with Respondent Warren Bradley Simmons, M.D., the terms
2 and conditions and other matters contained in this Stipulated Surrender of License and Order. I
3 approve its form and content.

4 DATED:

7-29-17


JOHN L. FLEER, ESQ.
Attorney for Respondent

6
7 ENDORSEMENT

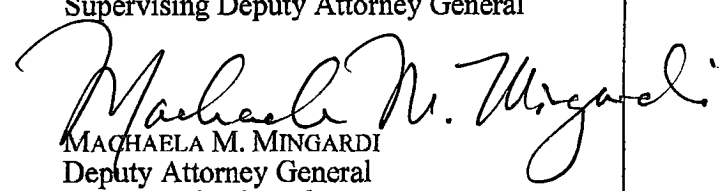
8 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
9 for consideration by the Medical Board of California of the Department of Consumer Affairs.

10 Dated:

8/15/2017

Respectfully submitted,

11 XAVIER BECERRA
12 Attorney General of California
13 JANE ZACK SIMON
14 Supervising Deputy Attorney General


15 MAEHAELA M. MINGARDI
16 Deputy Attorney General
17 *Attorneys for Complainant*

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Exhibit A

Accusation No. 800-2016-021102

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 MACHAELA M. MINGARDI
Deputy Attorney General
4 State Bar No. 194400
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5696
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 22 20 16
BY R. Firdaus ANALYST

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2016-021102

13 **Warren Bradley Simmons, M.D.**
14 4989 Wyffels Road
Canandigua, NY 14424

ACCUSATION

15 Physician's and Surgeon's Certificate
No. A 40948,

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer
21 Affairs (Board).

22 2. On or about June 25, 1984, the Medical Board issued Physician's and Surgeon's
23 Certificate Number A 40948 to Warren Bradley Simmons, M.D. (Respondent). Said license
24 expired on January 31, 2014. On May 19, 2016, the Medical Board of California suspended
25 Respondent's license pursuant to Business and Professions Code section 2310, which authorizes
26 immediate suspension when a medical license has been suspended or revoked in another state.

27 //

28 //

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board) under the authority of the following sections of the California Business and Professions Code (Code) and/or other relevant statutory enactment:

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2234 of the Code states, in pertinent part: "The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of [Chapter 5, the Medical Practice Act].

B. Section 2236 of the Code states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. . . .

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

C. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license to practice medicine issued by that state, that would have been grounds for discipline in California under the Medical Practice Act, constitutes grounds for discipline for unprofessional conduct.

//

1 D. Section 141 of the Code provides:

2 “(a) For any licensee holding a license issued by a board under the jurisdiction
3 of a department, a disciplinary action taken by another state, by any agency of the
4 federal government, or by another country for any act substantially related to the
5 practice regulated by the California license, may be ground for disciplinary action
6 by the respective state licensing board. A certified copy of the record of the
7 disciplinary action taken against the licensee by another state, an agency of the
8 federal government, or by another country shall be conclusive evidence of the
9 events related therein.

10 “(b) Nothing in this section shall preclude a board from applying a specific
11 statutory provision in the licensing act administered by the board that provides for
12 discipline based upon a disciplinary action taken against the licensee by another
13 state, an agency of the federal government, or another country.”

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Discipline, Restriction, or Limitation Imposed by Another State)

16 4. On March 11, 2016, the New York State Board for Professional Medical Conduct
17 (New York Board) issued a Consent Agreement (Agreement) suspending Respondent’s license
18 for an indefinite period, but in no case less than 12 months. In the Agreement, Respondent
19 admitted to the charges against him, which included allegations that on December 14, 2015,
20 Respondent pled guilty to five crimes, including two counts of Coercion in the First Degree, a
21 Class D felony; two counts of Unlawful Imprisonment in the Second Degree, a Class A
22 misdemeanor; and one count of Resisting Arrest, a Class A misdemeanor. A true and correct
23 copy of the Agreement is attached hereto as Exhibit A.

24 5. Respondent’s conduct and the Order of the New York Board, as set forth in paragraph
25 4 above, constitute unprofessional conduct within the meaning of section 2305 and conduct
26 subject to discipline within the meaning of section 141(a).

27 **SECOND CAUSE FOR DISCIPLINE**

28 (Conviction of Substantially Related Offense)

6. Respondent is subject to disciplinary action under sections 2234 and 2236 of the
Code in that, as described above, he was convicted of five crimes, including two counts of
Coercion in the First Degree, in violation of New York Penal Law section 135.65(1), a Class D
felony; two counts of Unlawful Imprisonment in the Second Degree, in violation of New York
Penal Law section 135.05, a Class A misdemeanor; and one count of Resisting Arrest, in

1 violation of New York Penal Law section 205.30, a Class A misdemeanor, which are offenses
2 substantially related to the qualifications, functions, and duties of a physician and surgeon.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Medical Board of California issue a decision:

6 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 40948,
7 issued to Warren Bradley Simmons, M.D.;

8 2. Revoking, suspending or denying approval of Warren Bradley Simmons, M.D.'s
9 authority to supervise physician assistants, pursuant to section 3527 of the Code;

10 3. Ordering Warren Bradley Simmons, M.D., if placed on probation, to pay the Board
11 the costs of probation monitoring; and

12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: July 22, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit B



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 26, 2017

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Warren B. Simmons, M.D.
13 Quoin Crescent
Victor, New York 14564

Re: License No. 174483

Dear Dr. Simmons:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 17-150. This order and any penalty provided therein goes into effect June 2, 2017.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

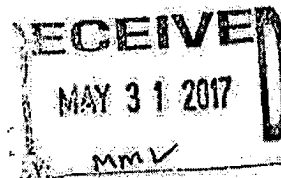
Sincerely,

Robert A. Catalano, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Catherine Gale, Esq.
Gale, Gale & Hunt, LLC.
PO Box 6527
Syracuse, New York 13217

Catherine Gale, Esq.
Gale, Gale & Hunt, LLC.
7136 East Genesee St.
Fayetteville, New York 13066



NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

BPMC No. 17-150

IN THE MATTER
OF
WARREN B. SIMMONS, M.D.

MODIFICATION
ORDER


Upon the proposed Application for a Modification Order of WARREN B. SIMMONS
M D (Respondent) which is made a part of this Modification Order, it is agreed to and
ORDERED that the attached Application and its terms are adopted and SO
ORDERED, and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board,
either

- by mailing of a copy of this Modification Order, either by first class to Respondent
at the address in the attached Application or by certified mail to Respondent's
attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney,
whichever is first

SO ORDERED

DATE: 5/25/2017


Carmela Torrelli
Vice Chair
State Board for Professional Medical Conduct

1

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
WARREN B. SIMMONS, M.D.

MODIFICATION
AGREEMENT
AND
ORDER

WARREN B. SIMMONS, M.D., represents that all the following statements are true:

That on or about May 25, 1988, I was licensed to practice as a physician in the State of New York, and issued License No. 174483 by the New York State Education Department.

My current address is 13 Quoin Crescent, Victor, NY 14564

and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to BPMC Order # 16-085 (Attachment I) (henceforth "Original Order"), which went into effect on March 18, 2016, and was issued upon an Application For Consent Order signed by me and adopted by the Original Order. I hereby apply to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows:

- Attached Exhibit "A" ("Statement of Charges") of this Modification Order shall substitute for attached Exhibit "A" of the Original Order. I do not contest the charges against me, and agree to the penalty imposed upon me.
- The sanction imposed in the Original Order, a suspension of license for an indefinite period but no less than 12 months, beginning on the effective date

of the Original Order (March 18, 2016), will continue as written in the Original Order. I shall remain subject to attached Exhibit "B" and attached Exhibit "C" of the Original Order, which are incorporated as attachments of this Modification Order.

and

All remaining Terms and Conditions will continue as written in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I knowingly waive my right to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

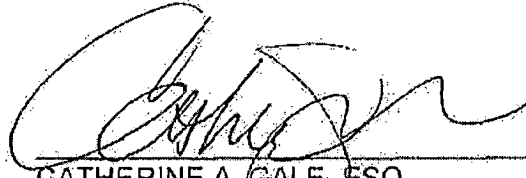
DATE

5/8/17


WARREN B. SIMMONS, M.D.
RESPONDENT

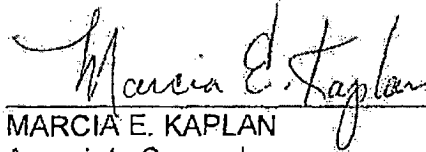
The undersigned agree to Respondent's attached Modification Agreement and to its proposed penalty, terms and conditions.

DATE:

5/11/2017

CATHERINE A. GALE, ESQ.
Attorney for Respondent

DATE:

May 16, 2017

MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE:

5/22/17

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

ATTACHMENT I



Department
of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 11, 2016

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Warren B. Simmons, M.D.
[Redacted]

Re: License No. 174483

Dear Dr. Simmons:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 16-085. This order and any penalty provided therein goes into effect March 18, 2016.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - DPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.

If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518)402-0855.

Sincerely,

[Redacted]
Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Catherine A. Gale, Esq.
Gale Gale & Hunt, LLC
PO Box 6627
Syracuse, New York 13217

Enclosure

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
WARREN B. SIMMONS, M.D.

CONSENT
ORDER

Upon the application of (Respondent) WARREN B. SIMMONS, M.D. - in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and

it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board,

either


by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR

upon facsimile transmission to Respondent or Respondent's attorney,

whichever is first.

SO ORDERED.

DATE 3/11/2016


CARMELA TORRELLI
Vice Chair
State Board for Professional Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
WARREN SIMMONS, M.D.

CONSENT
AGREEMENT

WARREN SIMMONS, M.D., represents that all of the following statements are true:

That on or about May 25, 1988, I was licensed to practice as a physician in the State of New York, and issued License No.174483 by the New York State Education Department.

My current address is [REDACTED] and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I do not contest the charges against me, and agree to the following penalty:

My license shall be suspended for an indefinite period but no less than 12 months. I shall be subject to a condition that I comply with attached Exhibit "C" ("Requirements for Closing a Medical Practice Following Medical License Revocation, Surrender, Limitation or Suspension." During the period of suspension, I shall be precluded from reliance upon my license to practice medicine to exempt me from the license, certification or other requirements set forth in statute or regulation for the practice of any other profession

licensed, regulated, or certified by the Board of Regents, Department of Education, Department of Health or the Department of State. Upon compliance with all the conditions of this Consent Order I may petition the Board for a Modification Order staying the indefinite suspension of my license.

I understand and agree:

That any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include terms of probation, and/or further conditions on my practice.

That the Board will exercise its reasonable discretion upon my petition for a modification Order through a Committee on Professional Conduct after a proceeding in which I have met a burden of proof and persuasion, as further set forth in attached Exhibit "B";

That the Committee's exercise of discretion shall not be reviewable by the Administrative Review Board; and

I further agree that the Consent Order shall impose the following conditions:

- That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a; and
- That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law §6502 including, but not limited to, the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent

shall not exercise the option provided in N.Y. Educ Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

- That Respondent shall remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the department all information required by the Department to develop a public physician profile for the licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ.

Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law §230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

- That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

- That Respondent shall cooperate fully with OPMC in its administration and enforcement of this Consent Order and in its investigation of all matters concerning Respondent. Respondent shall respond promptly to all OPMC requests for written periodic verification of Respondent's compliance with the terms of this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, and shall promptly provide OPMC with all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

If I am charged with professional misconduct in future, I hereby stipulate and agree that this Application and Consent Order, and/or related Modification Orders, shall be admitted into evidence in that proceeding as part of the Department's case-in-chief, at the sole discretion of the Department.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

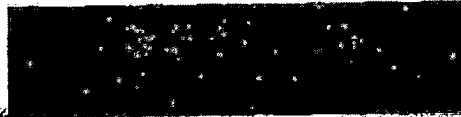
I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. This Consent Order, this Consent Agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed

agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.


DATE 3/3/16




WARREN SIMMONS, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 3/03/2016


CATHERINE A. GALE, ESQ.
Attorney for Respondent

DATE: 3/4/16


PAUL TSUI
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/8/16


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

EXHIBIT "A"
NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

WARREN B. SIMMONS, M.D.

STATEMENT
OF
CHARGES

WARREN B. SIMMONS, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 25, 1988, by the issuance of license number 174483 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 14, 2015, in the Supreme Court, State of New York, County of Ontario, Respondent was found guilty, based on a plea of guilty, of
1. Unlawful Imprisonment in the Second Degree, in violation of New York Penal Law § 135.05, a Class A misdemeanor (2 counts), occurring on or about September 20, 2015.
 2. Resisting Arrest, in violation of New York Penal Law § 205.30, a Class A misdemeanor. (1 count), occurring on or about September 19, 2015.

On or about December 12, 2016, Respondent was sentenced to 3 years of probation and a 5 year Order of Protection was issued.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (N.Y.S.)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

I. Paragraph A.

DATE: May 16, 2017
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

- 1) The suspension of Respondent's license shall be terminated only after Respondent makes a showing to the satisfaction of a Committee on Professional Conduct (Committee) of the State Board for Professional Medical Conduct (Board) that Respondent has successfully complied with or successfully completed a course of therapy and ongoing evaluation and is no longer incapacitated for the practice as a physician, and a Committee makes a determination that Respondent is both fit and clinically competent to practice as a physician. Respondent shall provide the Office of Professional Medical Conduct (OPMC) with a proposed treatment plan for advice as to whether it is generally appropriate; however, the determination of successful compliance with or completion of a course of therapy, and the determination that Respondent is no longer incapacitated for the active practice as a physician, shall be made solely by the Committee.
- 2) After Respondent completes at least 12 months of suspension pursuant to the terms of this Consent Order, and upon Respondent's request which may be initiated after 6 months of suspension, a Committee shall be convened to hear and evaluate Respondent's showing, as set forth in paragraph 1 above. The Board will make reasonable attempts to convene a Committee within 90 days of Respondent's request (although in no event shall it be convened prior to completion of 12 months of suspension); however, Respondent's request shall not be perfected until the Director of OPMC receives all the required documentation, and complies with all the Conditions, set forth in paragraph 3 below. The Board shall determine the procedural nature of the proceeding through the exercise of the Director of OPMC's reasonable discretion upon consultation with Counsel, Bureau of Professional Medical Conduct (Counsel). Proceedings before a Committee shall not be in the nature of a hearing pursuant to N. Y. Pub. Health Law § 230, but shall instead be informal and intended only to address any facts, evidence, information, circumstances, or issues relating to the advisability of terminating Respondent's license suspension. The Committee shall be given access to evidence including, but not limited to:
 - a) Any evidence pertaining to Respondent's compliance with the conditions imposed.
 - b) Any evidence that the Director or Counsel deems appropriate.
- 3) Upon requesting that a Committee be convened, pursuant to paragraph 2, Respondent shall provide the Director of OPMC with the following:
 - a) The signed acknowledgment and curriculum vitae from the proposed sobriety monitor referred to in paragraph 5c.

- b) The signed acknowledgment and curriculum vitae from the proposed supervising physician referred to in paragraph 5d.
- c) The signed acknowledgment and curriculum vitae from the proposed health care professional referred to in paragraph 5e.
- d) Certified true and complete copies of all evaluation and treatment records relating to Respondent's substance abuse/dependence, psychological, psychiatric and/or mental health treatment, whether in an in-patient, out-patient, after-care or consultation setting; the certified records shall be forwarded directly to OPMC by the treatment providers, facilities and evaluators. The records shall reflect all treatment and evaluation provided, and shall include the results of all tests conducted to evaluate Respondent's fitness and clinical competence to practice medicine, whether the treatment, evaluation and testing occurred before, or while, the suspension was in effect.
- e) Documentation of Respondent's participation in the program(s) of the Committee for Physicians' Health of the Medical Society of the State of New York or other equivalent program(s). Documentation shall include but not be limited to verification of compliance and results of forensically valid alcohol/drug screening.
- f) Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. § 290dd-3 and ee-3 and 42 C.F.R., Part 2.
- g) A current, independent, in-depth chemical dependency and psychiatric evaluation by a board-certified psychiatrist specializing in addiction medicine.
- h) Upon request of the Director of OPMC, Respondent shall attend, participate in and cooperate with an interview with designated personnel from the OPMC.

Provision of the documents listed in this paragraph shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

- 4) At least 14 days before the scheduled date of the proceeding referred to in paragraph 2, Respondent shall provide OPMC with the following:

- a) Certified true and complete copies of records updating treatment and alcohol/drug screening since the date of the original submissions referred to in paragraph 3d.
- b) Evidence that Respondent has maintained adequate knowledge and competence to practice as a physician; this evidence shall include documentation of continuing medical education and, at the Director of OPMC's request, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the evidence listed in this paragraph shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

- 5) If the Chair of the Committee issues an Order finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice medicine, and therefore terminates the suspension of Respondent's license, the Order shall further impose a period of probation, pursuant to N.Y. Pub. Health Law § 230-a, during which Respondent's practice as a physician shall be subject to conditions imposed for a period of no less than five years. The minimum conditions shall include the following:
 - a) Respondent shall be required to comply with the terms of a continuing after-care treatment plan addressing the major problems associated with Respondent's illness.
 - b) At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board-certified psychiatrist or other licensed mental health practitioner designated by the Director. This practitioner shall report to the Director regarding Respondent's condition and Respondent's fitness or incapacity to practice as a physician.
 - c) Respondent's sobriety will be monitored by a health care professional proposed by Respondent and approved, in writing, by the Director of OPMC ("sobriety monitor"). The sobriety monitor shall not be a personal friend. The sobriety monitor shall be familiar with Respondent's history of chemical dependence, with this suspension and with the terms of probation to be set forth. The sobriety monitor shall acknowledge willingness to comply with the monitoring terms by executing the acknowledgment provided by OPMC.
 - i) Respondent shall remain free from alcohol and all other mood altering substances other than those prescribed for Respondent's

treatment by a licensed health care professional aware of Respondent's history of chemical dependency and mental illness. Respondent shall not self-prescribe any medications.

- ii) The sobriety monitor shall see Respondent at least twice during each month.
 - iii) The sobriety monitor shall direct Respondent to submit to unannounced tests of Respondent's blood, breath and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time a test is positive or is refused by Respondent. Respondent shall avoid all substances that may cause positive urine drug screens such as poppy seeds, mouthwash, cough medicine, etc. Any positive result shall be considered a violation of probation.
 - iv) The sobriety monitor shall report to OPMC any non-compliance with the imposed conditions.
 - v) Respondent shall ensure that the sobriety monitor submits quarterly reports to OPMC certifying Respondent's compliance, or detailing Respondent's failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- d) Respondent's medical practice shall be supervised by a licensed physician ("practice supervisor") proposed by Respondent and approved, in writing, by the Director of OPMC. The supervising physician shall be familiar with Respondent's history of impairment and with the Order and its conditions. The supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. The supervising physician shall be in a position to regularly observe and assess Respondent's medical practice. The supervising physician shall oversee Respondent's prescribing, administering, dispensing, inventorying and wasting of controlled substances. The supervising physician shall acknowledge willingness to comply with the supervision terms by executing the acknowledgment provided by OPMC.
- i) Respondent shall ensure that the supervising physician submits quarterly reports to OPMC regarding the quality of Respondent's medical practice, any unexplained absences from work and certifying Respondent's compliance with each condition imposed, or detailing Respondent's failure to comply.

- ii) The supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
 - e) Respondent shall continue in treatment with a health care professional or program ("health care professional") proposed by Respondent and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
 - i) Respondent shall ensure that the health care professional submits quarterly reports to OPMC certifying that Respondent is in compliance with treatment, or detailing Respondent's failure to comply.
 - ii) The health care professional shall report to OPMC immediately if Respondent is non-compliant with the treatment plan or demonstrates any significant pattern of absences.
 - iii) The health care professional shall acknowledge willingness to comply with the reporting requirements with respect to treatment by executing the acknowledgment provided by OPMC.
 - f) Licensee shall provide the Director of OPMC with, and ensure to keep current and effective, fully executed waivers of patient confidentiality concerning any prior or prospective evaluation and treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. § 290dd-3 and ee-3 and 42 C.F.R. Part 2.
- 6) The terms set forth in paragraph 5 are the minimum probation terms related to fitness to practice to be imposed on Respondent upon the termination of Respondent's license suspension, and other terms may be added by the Committee. All compliance costs shall be Respondent's responsibility. Respondent's failure to comply with any condition imposed at the time of suspension termination may result in disciplinary action against Respondent with charges of professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law § 6530(29).
- 7) If a Committee denies a petition by Respondent for license suspension termination, Respondent shall be barred from requesting that a Committee be convened to hear a petition for license suspension termination for 9 months from the date of the denial.

8) In addition to the terms set out in paragraph 5, and any other terms added by the Committee, upon the termination of Respondent's license suspension, Respondent shall also be subject to the following standard terms of probation:

- a) Respondent's conduct shall conform to moral and professional standards of conduct and governing law.
- b) Any civil penalty not paid by Respondent by the prescribed date shall subject Respondent to all legal provisions pertaining to debt collection, including the imposition of interest, late payment charges and collection fees, referral of the debt to the New York State Department of Taxation and Finance for collection, and the non-renewal of permits or licenses. [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
- c) The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
- d) Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to a review of office records, patient records, hospital charts, and/or electronic records, as well as interviews and/or periodic visits with Respondent and staff at practice locations or OPMC offices.
- e) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- f) Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by state rules and regulations regarding controlled substances.

- g) Respondent shall comply with this Consent Order and all its terms, conditions, restrictions, limitations and penalties and shall be responsible for all associated compliance costs. Upon receiving evidence of non-compliance with the Consent Order, or any violation of its terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent authorized by law.

EXHIBIT "C"

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

EXHIBIT "C"

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges

of which the Licensee is found guilty, and may include revocation of a suspended license.